

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re.

VINCENT ROSENBALM,

Plaintiff.
_____No. C 08-279 SI (pr)
No. C 08-751 SI (pr)
No. C 08-952 SI (pr)
No. C 08-1360 SI (pr)
No. C 08-1474 SI (pr)
No. C 08-1503 SI (pr)
No. C 08-1504 SI (pr)
No. C 08-1603 SI (pr)**ORDER TO SHOW CAUSE RE.
CONTEMPLATED DISMISSAL**

Vincent Rosenbalm filed these eight civil actions in the last three months. He is in the Napa State Hospital pursuant to a commitment under California Penal Code § 1370 in his pending criminal case in Mendocino County Superior Court. Rosenbalm has been committed pending restoration of his competency to stand trial in that criminal case. The court earlier determined that the commitment within the pending criminal case makes Rosenbalm a prisoner within the meaning of Section 1915(g). See Order of Dismissal filed June 1, 2007, in In Re. Vincent Rosenbalm, C 06-7801 SI, et al. This order concerns only his civil actions and does not concern his habeas petition. Rosenbalm seeks to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 in all the referenced cases.

A prisoner may not bring a civil action in forma pauperis under 28 U.S.C. § 1915 "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the

1 prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Section
2 1915(g) requires that this court consider prisoner actions dismissed before, as well as after, the
3 statute's 1996 enactment. Tierney v. Kupers, 128 F.3d 1310, 1311-12 (9th Cir. 1997).

4 For purposes of a dismissal that may be counted under § 1915(g), the phrase "fails to state
5 a claim on which relief may be granted" parallels the language of Federal Rule of Civil
6 Procedure 12(b)(6) and carries the same interpretation, the word "frivolous" refers to a case that
7 is "of little weight or importance: having no basis in law or fact," and the word "malicious"
8 refers to a case "filed with the 'intention or desire to harm another.'" Andrews v. King, 398 F.3d
9 1113, 1121 (9th Cir. 2005) (citation omitted). Only cases within one of these three categories
10 can be counted as strikes for § 1915(g) purposes, so the mere fact that Rosenbalm has filed many
11 cases, of which none apparently were successful, does not alone warrant dismissal under §
12 1915(g). See id. Rather, dismissal of an action under § 1915(g) should only occur when, "after
13 careful evaluation of the order dismissing an [earlier] action, and other relevant information, the
14 district court determines that the action was dismissed because it was frivolous, malicious or
15 failed to state a claim." Id.

16 Andrews requires that the prisoner be given notice of the potential applicability of §
17 1915(g), by either the district court or the defendants, but also requires the prisoner to bear the
18 ultimate burden of persuasion that § 1915(g) does not bar pauper status for him. Id. Andrews
19 implicitly allows the court to sua sponte raise the § 1915(g) problem, but requires the court to
20 notify the prisoner of the earlier dismissals it considers to support a § 1915(g) dismissal and
21 allow the prisoner an opportunity to be heard on the matter before dismissing the action. See
22 id. at 1120. A dismissal under § 1915(g) means that a prisoner cannot proceed with his action
23 as a pauper under § 1915(g), but he still may pursue his claims if he pays the full filing fee at the
24 outset of the action.

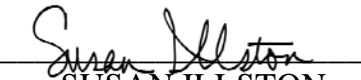
25 A review of the dismissal orders in Rosenbalm's prior prisoner actions in this court
26 reveals that Rosenbalm has had at least three such cases dismissed on the ground that they were
27 frivolous, malicious, or failed to state a claim upon which relief may be granted. Rosenbalm is
28

1 now given notice that the court believes the following dismissals may be counted as dismissals
2 for purposes of § 1915(g): (1) Rosenbalm v. Klein, N. D. Cal. Case No. C 96-850 SI (civil action
3 dismissed under former § 1915(d) (allowing dismissal of pauper action "if satisfied that the
4 action is frivolous or malicious") because allegations in complaint duplicated allegations in an
5 earlier action); (2) Rosenbalm v. Lungren, N. D. Cal. Case No. C 96-2121 SI (civil action
6 dismissed under former § 1915(d) (allowing dismissal of pauper action "if satisfied that the
7 action is frivolous or malicious") because allegations in complaint duplicated allegations in an
8 earlier action); (3) Rosenbalm v. Lungren, N. D. Cal. Case No. C 96-3375 SI (civil rights action
9 dismissed under former § 1915(d) (allowing dismissal of pauper action "if satisfied that the
10 action is frivolous or malicious") because allegations in complaint duplicated allegations in an
11 earlier action); and (4) Rosenbalm v. State of California, N. D. Cal. Case No. C 96-0010 SI (civil
12 rights action dismissed for failure to state a claim upon which relief may be granted). The court
13 made its evaluation of these cases based on the dismissal orders in them. See Andrews, 398 F.3d
14 at 1120 (sometimes the docket records may be sufficient, and sometime the actual court files
15 may need to be consulted).

16 In light of these dismissals, and because Rosenbalm does not appear to be under imminent
17 danger of serious physical injury, he is ORDERED TO SHOW CAUSE in writing filed no later
18 than **May 2, 2008** why in forma pauperis should not be denied and each of these action should
19 not be dismissed pursuant to 28 U.S.C. § 1915(g). In the alternative to showing cause why each
20 action should not be dismissed, Rosenbalm may avoid dismissal by paying the full \$350.00 filing
21 fee by the deadline for each of the referenced cases.

22 IT IS SO ORDERED.

23 Dated: April 3, 2008

24 
25 SUSAN ILLSTON
26 United States District Judge
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBALM,
Plaintiff,

Case Number: CV08-00279 SI

CERTIFICATE OF SERVICE

v.

JUGE CINDEE MAYFIELD et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBAUM,
Plaintiff,

Case Number: CV08-00751 SI

CERTIFICATE OF SERVICE

v.

STATE OF CALIFORNIA et al,
Defendant.

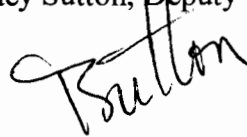
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk

A handwritten signature in black ink, appearing to read "TSutton", is written over the printed name of the Deputy Clerk.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBALM,
Plaintiff,

Case Number: CV08-00952 SI

CERTIFICATE OF SERVICE

v.

GLENN STARK et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBALM,
Plaintiff,

Case Number: CV08-01360 SI

CERTIFICATE OF SERVICE

v.

RICHARD FREEBORN et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBALM,
Plaintiff,

Case Number: CV08-01474 SI

CERTIFICATE OF SERVICE

v.

HARLAND STONECIPHER et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBALM,
Plaintiff,

Case Number: CV08-01503 SI

CERTIFICATE OF SERVICE

v.

ED FOULK et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBALM,
Plaintiff,

Case Number: CV08-01504 SI

CERTIFICATE OF SERVICE

v.

JIM BROOKS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wicking, Clerk
By: Tracy Sutton, Deputy Clerk



UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBALM,
Plaintiff,

Case Number: CV08-01603 SI

CERTIFICATE OF SERVICE

v.

ED FOULK et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vincent Lee Rosenbalm #83912
Napa State Hospital
2100 Napa Vallejo Highway
Napa, CA 94558

Dated: April 4, 2008

Richard W. Wieking, Clerk
By: Tracy Sutton, Deputy Clerk

